

Decision 98-10-059 October 22, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting for Electric
Distribution Facility Standard Setting.R.96-11-004
(Filed November 6, 1996)**ORIGINAL****ORDER DENYING REHEARING OF D. 98-03-036**

In D. 98-03-036, we adopted inspection and maintenance rules for publicly-owned electric utilities and requested comments from interested parties concerning proposed emergency response rules. We also proposed minor modifications to accident reporting requirements. The inspection and maintenance rules were originally proposed for investor owned utilities in D. 97-03-070. Based on concerns over competitive pressures on utilities to cut costs, we also proposed the inspection and maintenance rules for publicly-owned electric utilities. We concluded that jurisdiction existed to adopt these rules under Public Utilities Code sections 8001-8057 and Polk v. City of Los Angeles (1945) 26 Cal.2d 519, 540.

An application for rehearing of D. 98-03-036 was filed by the California Municipal Utilities Association (CMUA). We have reviewed this application for rehearing as well as the response in support filed by the City and County of San Francisco (CCSF). We have also reviewed the responses in opposition to the application filed by the Office of Ratepayer Advocates (ORA), the California Cable Television Association (CCTA), the Coalition of California Utility Employees (CCUE) and Pacific Gas and Electric (PG&E). We conclude that sufficient grounds for granting rehearing have not been shown.

CMUA's Application is premised on the contention that we have no jurisdiction to adopt the rules for publicly-owned utilities. In support, CMUA raises the following three arguments.

First, CMUA argues that the legal authority we relied upon does not support our jurisdiction. CMUA acknowledges our jurisdiction to enforce the express provisions of sections 8001-8057. CMUA, nevertheless, disputes that sections 8001-8057 grant plenary jurisdiction over publicly-owned utilities to adopt the rules. CCSF notes that the rules require record keeping and reporting not specifically addressed in sections 8001-8057. CMUA asserts that our reliance on Polk, supra, is misplaced. CMUA argues that Polk merely held that Commission safety rules establish a publicly-owned utility's duty for a negligence claim. *Id.* at 541.

The above-cited authority does support our jurisdiction, however. We have jurisdiction over safety aspects of the electrical systems of publicly-owned utilities. The California Constitution, Article XII, section 5, permits the Legislature to grant such jurisdiction to the Commission. County of Inyo v. Pub. Util. Com'n (1980) 26 Cal.3d 154, 164, held that Article XII, section 5 authorizes the Legislature's grant of jurisdiction to the Commission over the operations of municipally owned utilities.

By enacting sections 8001-8057, the Legislature conferred jurisdiction on the Commission to regulate electrical lines for public safety purposes. Sections 8001-8057 give the Commission authority to regulate the maintenance and construction of electrical lines. Sections 8056 and 8037 provide, in pertinent part: "[t]he commission may inspect all work which is included in the provisions of this article, and may make such further additions or changes as the commission deems necessary *for the purpose of safety to employees and the general public.*" (Emphasis added.) This regulatory jurisdiction is not limited to

investor owned utilities. Nothing in the language of Assembly Bill No. 1890, 1996 Regular Session, section 364 alters the Commission's regulation of electrical lines under sections 8001-8057.

Moreover, the Commission's jurisdiction is liberally construed. Consumers Lobby Against Monopolies v. Public Utilities Com. (1979) 25 Cal. 3d 891, 905. The absence of a specific statutory authorization does not necessarily deprive the Commission of jurisdiction. *Id.* at 906. Under Public Utilities Code section 701, the Commission also has expansive authority to "do all things, whether specifically designed in [the Public Utilities Act] or addition thereto, which are necessary and convenient' in the supervision and regulation of every public utility in California." *Id.*

Polk, *supra*, 26 Cal.2d 519, also supports our exercise of jurisdiction over the safety aspects of electrical lines. Polk involved a tree trimmer's negligence claim against a municipally operated electric utility. Challenging the Commission's jurisdiction, the utility disputed that the Commission's safety rules established its duty of care. *Id.* at 539. The Court noted that the rules were promulgated under the predecessor statute to section 8037. In finding the rules applicable, the Court stated that "there can be no doubt that the Legislature was empowered to pass such a statute [predecessor to section 8037] and make it applicable to municipally operated utility systems. . . .The safety of overhead wire maintenance is a matter of statewide, rather than local concern, and the state law is paramount." *Id.* at 540-541.

The second argument raised by CMUA is that the proceedings herein were flawed. CMUA points to an absence of participation by many publicly-owned utilities. CMUA contends that the rules were not based on evidence relevant to publicly-owned utilities; it was not until after the fact finding

proceeding was complete and D. 97-03-070 issued that the rules were proposed for publicly-owned utilities.

In fact, there was relevant record evidence to support the application of the rules to publicly-owned utilities. D. 97-03-070 requested comments from municipal and publicly-owned utilities regarding the extent to which the rules should apply to them. (D. 97-03-070, p. 10.) Comments were filed by the Merced Irrigation District and the Los Angeles Department of Water and Power as well as CMUA. Additionally, the rules were based on industry standards. We noted sufficiently similar operations between investor and publicly-owned utilities such that uniform rules were appropriate. No evidence to the contrary was submitted by the parties.

Third, CMUA argues that the rules do not reflect sound public policy. Given the history of safe operations and voluntary cooperation on the part of publicly-owned utilities, CMUA questions the need for the rules. CMUA also criticizes the segregation of rule implementation costs from ratemaking. CCSF asserts that the rules are actually unauthorized ratemaking, citing City and County of San Francisco v. United Airlines (9th Cir. 1979) 616 F.2d 1063, 1068.

Contrary to CMUA's position, the rules reflect sound public policy. The rules will ensure the continued safety and reliability of the State's electrical systems. Public safety is best served if electric utilities are subject to uniform standards and operational protocols. As pointed out by ORA, emergencies or power outages within a municipal utility's service area can have effects on the State's grid that are not confined to that utility's electric system. There is also no evidence of an unreasonable financial burden associated with implementing the rules. A publicly-owned utility may seek an exemption from specific rules by way of an advice letter which demonstrates active local regulatory oversight over the relevant activities and that the utility's program is reasonable in light of prevailing

industry standards. Moreover, the rules are not rate regulations simply by virtue of an indirect effect on rates. See, e.g., Morrison v. Viacom (1997) 52 Cal.App.4th 1514, 1523-1527; modified at 53 Cal.App.4th 1266; Total TV v. Palmer Communications (9th Cir. 1995) 69 F.3d 298, 301.

No further discussion is required of CMUA's allegations of error. Accordingly, upon review of each and every allegation of error raised by CMUA, we conclude that sufficient grounds for rehearing of D.98-03-036 have not been shown.

Therefore, **IT IS ORDERED** that the application for rehearing of Decision (D.) 98-03-036 filed by CMUA is denied.

This order is effective today.

Dated October 22, 1998, at San Francisco, California.

RICHARD A. BILAS
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners